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**IN THE
COURT OF APPEALS OF INDIANA**

HENRY BOOKER,

Appellant-Defendant,

vs.

BARTHOLOMEW COUNTY DEPARTMENT
OF CHILD SERVICES,

Appellee-Plaintiff.

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No. 03A05-0612-JV-686

APPEAL FROM THE BARTHOLOMEW JUVENILE AND CIRCUIT COURT

The Honorable Stephen R. Heimann, Judge
The Honorable Heather M. Mollo, Juvenile Referee
Cause No. 03C01-0601-JT-213

June 7, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Henry Booker (“Father”) appeals the trial court’s order terminating his parental rights to his son, H.A.B. Concluding that the Bartholomew County Department of Child Services (“BCDCS”) proved by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in H.A.B.’s removal or the reasons for placement outside the home will not be remedied, we affirm the termination of Father’s parental rights to H.A.B.

Facts and Procedural History

H.A.B. was born on August 30, 1994, and is the child of Father and Margaret Smith (“Mother”). On October 4, 2004, the BCDCS removed ten-year-old H.A.B. and his two step-sisters from Mother’s home after receiving anonymous complaints that Mother had been using drugs and had been neglecting H.A.B. and his step-sisters. When the BCDCS worker went to Mother’s house, the house was in disarray, there was no food for the children to eat, the children were dirty, and Mother had slurred speech and appeared to be under the influence of drugs. The step-sisters told the BCDCS worker that there was a white powder in the house and that Mother had been using drugs. Mother told the BCDCS worker that she could not handle the children and asked the worker to take them.¹

On the day H.A.B. was removed from Mother’s home, Father was incarcerated—and had been so since April 2004—on a charge of robbery as a Class C felony. A few days following H.A.B.’s removal, on October 19, 2004, Father was sentenced to serve six

¹ Mother’s parental rights to H.A.B. and the two step-sisters were terminated during the termination hearing held for Father. Mother is not part of this appeal.

years in the Indiana Department of Correction (“DOC”) as a result of his robbery conviction. That same day, Father was also sentenced, under a separate cause number, to three years, suspended to probation, for his conviction for theft as a Class D felony to be served consecutively to his robbery conviction. Father’s criminal history also includes prior convictions for two counts of possession of cocaine, Class D felonies, and visiting a common nuisance, a Class B misdemeanor. Father’s earliest release date from prison for his robbery conviction is November 2007.

In November 2004, the BCDCS filed a petition alleging that H.A.B. was a child in need of services (“CHINS”). The petition alleged that H.A.B.’s “physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, medical care, education or supervision[.]” Petitioner’s Ex. 2, p. 32. Father, who was incarcerated at Westville Correctional Facility, was transported for the CHINS fact-finding hearing, during which he admitted that H.A.B. was a CHINS and that “he [wa]s not able to provide for him at th[at] time[.]” *Id.* at 47. The trial court then determined that H.A.B. was a CHINS. As part of the dispositional order, the trial court noted that “[Father] w[ould] not be available to participate under the case plan due to a DOC sentence for Robbery, a class C felony.” *Id.* at 51. Nevertheless, Father was ordered, in part, to cooperate with the BCDCS and “[m]aintain consistent contact” with the family case manager. *Id.* at 52.

H.A.B. has significant cognitive disabilities and mental health issues. He has been diagnosed with mild mental retardation, adjustment disorder, mixed language disorder,

autism, obsessive-compulsive disorder, and attention-deficit hyperactivity disorder. Additionally, H.A.B. has sensory integration issues and suffers from anxiety. He requires constant supervision and needs assistance with activities of daily living, including bathing, brushing his teeth, tying his shoes, and dressing himself. When H.A.B. was made a ward of the BCDCS, he was placed in facilities—first, in residential treatment facilities and later, in a group home—that could provide supervision and manage his needs.

In January 2006, the BCDCS filed a petition to terminate Father's parental rights as to H.A.B. The trial court held a termination hearing in August 2006, at which time H.A.B. was just turning twelve years old. During the termination hearing, various treatment providers testified regarding H.A.B.'s need for structure, stability, twenty-four hour supervision, and assistance with daily living needs, such as bathing, picking out clothes, tying his shoes, eating, reading, taking medication, assistance with schoolwork, and setting boundaries. They also testified that due to H.A.B.'s mental health needs and behavioral issues, he would need counseling, special services, and medication into adulthood.

Babe Longanecker, who was H.A.B.'s therapist in one of the residential treatment facilities, testified that it was in H.A.B.'s best interests to have Father's parental rights terminated because H.A.B. needed structure, supervision, consistency, and "intensive services" and that "his family hasn't provided him consistent contact the whole time he was [in the facility]." Tr. p. 34. Longanecker also testified that the BCDCS had tried to place H.A.B. with two therapeutic foster families, who had specialized training to deal

with H.A.B.'s types of issues, but that they were not able to provide him with what he needed.

Koretta Hall, who served as the service coordinator for all of H.A.B.'s service providers, testified that H.A.B. had to have a behavior management specialist work with him because when he first arrived at the treatment facility, he would not bathe and was urinating on the floor. She testified that H.A.B. needed to be placed with someone who had training in therapeutic care because of his difficulties. She testified that it would take someone "at least" six months to get the required level of therapeutic training necessary to take care of all of H.A.B.'s needs. *Id.* at 56. She testified that the person with whom H.A.B. would be placed needed to be "very patient, very structured, [and] very involved with [H.A.B.'s] educational needs" and that the "huge thing for [H.A.B.] [wa]s the consistency and the structure." *Id.*

Daniel Baker, who provided behavioral management for H.A.B., testified that whoever was going to be H.A.B.'s caregiver was going to need specialized training to deal with him and his needs. Baker testified that H.A.B. would need some degree of support, including "significant" support with schoolwork, for "the rest of his life[.]" *Id.* at 64. Baker testified that in the year that he worked with H.A.B., H.A.B. did not mention his father but that he "got very upset" when Baker brought up Father's name, "to the point where he was screaming, . . . trying to throw [Baker's] car into a different gear, . . . [and] threatening to jump out [of] the car[.]" *Id.* at 63, 65.

DeAnna Gamroth, the BCDCS family case manager assigned to the case, testified that Father did not comply with the disposition decree because he never contacted her to

inquire about H.A.B. Gamroth also testified that H.A.B. required constant supervision and structure because he has a heightened level of anxiety, has difficulty processing what he sees, hears, and feels, and has difficulty coming up with appropriate responses. Gamroth testified that this supervision and support would be required into H.A.B.'s adulthood. Gamroth testified that she was "not very confident" that Father could handle the supervision that H.A.B. required because she had not "seen much of a level of commitment from [Father] when H.A.B. [wa]s not even in his care." *Id.* at 132.

Gamroth explained:

[I]t rings hollow for [Father] to come in and say I really want to raise my child when he's made no attempt to have a relationship with this child. Simply because he's in jail, doesn't mean he can't send him cards. I've got parents who make cards, you know, color them by hand, and send them to their children. I haven't seen that from him. So, his claim that he wants to raise a child and take care of him, seem a little hollow when he doesn't even do a very basic thing, which is just maintain contact with him.

Id. at 132-33. She also testified that she could not recommend that H.A.B. be reunited with Father, in part, because Father had not had contact with H.A.B. for two years, was not educated or trained on how to handle all of H.A.B.'s issues and needs, had difficulty with his own ability to read and write, and would not be out of prison before November 2007, which would leave H.A.B. "waiting in the system that much longer [when] he may be well ready to move on to a permanent home [and had] already been in the system nearly two years." *Id.* at 117-18.

Richard Nipper, the court appointed special advocate ("CASA"), testified that Father sent him two letters to send to H.A.B. but that Father could have written more. The CASA testified that it was not in H.A.B.'s best interests to wait until Father was

released from prison and attempt a reunification at that time because H.A.B. “need[ed] to have a permanent home” and that it was uncertain that “come November of ‘07, if [Father] would be out of . . . prison.” *Id.* at 139. The CASA testified that it would not be in H.A.B.’s best interests to have him “wait to see what [Father] does.” *Id.* at 140. The CASA also testified that H.A.B. had special needs and that he believed that it was in H.A.B.’s best interests to proceed with termination because he did “not believe that [Father] would ever be able to maintain that.” *Id.* at 144.

Father testified that he did not have much contact with H.A.B. while he was in Mother’s care due to a restraining order that Mother had against Father. Father reported that he “paid child support and [sic] mainly to see [H.A.B.] [and that he would] give her cash money or pills or something or drugs to be able to see him or to come over and talk to him.” *Id.* at 151-52. Father testified that he knew that Mother was being neglectful with H.A.B. but that he did not try to get custody of him. He testified that the last time he had seen H.A.B. was sometime between April 2004 and October 2004 and that prior to that, there was an eighteen-month period when he was in Florida and had no contact with H.A.B. Father also testified that he was on social security disability prior to being incarcerated and that his driver’s license was suspended. Father testified that he had problems with reading and writing but that he was taking reading classes in prison. He also indicated that he took some parenting classes and a physical fitness class. Additionally, Father testified that he had a prior criminal history, which included a conviction for possession of cocaine, that he had been incarcerated for robbery since

April 2004, and that his earliest release date from prison was moved from April 2007 to November 2007 because he had violated prison rules when he was caught with tobacco.

Finally, the BCDCS introduced an October 2004 letter that Father wrote to the trial court judge from his robbery case prior to his sentencing in that case. In the letter, Father stated that he had a drug problem and that he wanted to be a positive influence in his two daughters' lives. Father's letter, however, made no mention of his son, H.A.B.

On November 14, 2006, the trial court issued an order terminating Father's parental rights to H.A.B. The trial court found, among other things, as follows:

8. It was established by clear and convincing evidence that there is a reasonable probability that the conditions that resulted in [H.A.B.'s] removal and the reasons for placement outside the home will not be remedied and that the continuation of the parent-child relationship poses a threat to the well-being of [H.A.B.].

9. [H.A.B.] w[as] removed from the home of their mother, Margaret Smith, on October 4, 2004. Henry Booker, the father of [H.A.B.], was incarcerated at that time on a robbery charge.

* * * * *

11. A petition alleging that [H.A.B. was a child] in need of services was filed on November 30, 2004 . . . [Father] admitted that [H.A.B.] was in need of services and that he was unavailable to care for him due to his incarceration

* * * * *

13. [Father] was required to cooperate with the Department . . . [and] maintain contact with the Department . . . De[Anna] Gamroth reported throughout these proceedings . . . that [Father] failed to make any contact with her. He did not participate in the case in any way, other than occasionally attending hearings. He was still incarcerated at the time of the termination hearing.

* * * * *

20. At the time of the termination hearing, [Father] was still incarcerated. He had been incarcerated since April, 2004, and will be incarcerated until at least April, 2007, and possibly November, 2007. He had not visited with [H.A.B.] since early, 2004, when he visited with him while incarcerated at the Bartholomew County Jail.

21. Even prior to his incarceration, [Father] had only sporadic contact with [H.A.B.]. He went to Florida for a period of eighteen months to visit with his child and grandchildren. He admitted that he had no contact with [H.A.B.] during that time. He also stated that he did not have regular contact with [H.A.B.] while he was in [Mother's] care. He was aware that [Mother] was not properly caring for [H.A.B.], but he did not seek to get custody of [H.A.B.].

22. [Father] acknowledged that his formal release date is November, 2007. He expected to get released early, however, he was charged with a rules violation because he was found to be in possession of tobacco. Therefore, he is not certain of his release date. Upon his release, he plans to live in Lafayette, Indiana with a person he met while incarcerated. He does not know where he will be employed upon his release. He does not have a driver's license.

23. [Father] has written letters and sent cards to [H.A.B.] on a few occasions since the Department become involved in this matter. He admitted that he made no effort to contact the family case manager or inquire about [H.A.B.]. He did speak to the CASA on one occasion about visiting [H.A.B.], but he never asked the family case manager to arrange a visit.

24. [H.A.B.] has significant issues. He has previously been diagnosed with static encephalopathy, mixed language disorder, dyslexia, mild mental retardation, obsessive compulsive disorder, and autism. He had been in treatment facilities even prior to the Department's involvement with the family. In July, 2006, he was moved to a group home in Connersville, Indiana. It was reported from numerous service providers that [H.A.B.] requires significant help with all activities of daily living, including bathing and dressing himself. He is under the care of a psychiatrist and that is expected to continue for some time. He attends counseling now and will need counseling for many years. He also requires assistance with his school work. [H.A.B.] requires almost constant supervision. He has not discussed his father with his service providers. One provider mentioned his father in conversation and [H.A.B.]'s behavior became almost out of control.

* * * * *

26. Termination of the parent-child relationship between [Father] and [H.A.B.] is in the best interests of [H.A.B.] given the length of time that he has been out of the home and under wardship and the need for permanency; due to the minimal amount of contact that has occurred between [Father] and [H.A.B.] during his lifetime; and due to [Father's] continued incarceration and inability to provide care for [H.A.B.]. While [Father] may be released in the near future, that does not guarantee that he will have the means or ability to care for [H.A.B.] once he is released.

Appellant's App. p. 38-41. Father now appeals the involuntary termination of his parental rights to H.A.B.

Discussion and Decision

Father argues that the trial court erred when it terminated his parental rights to H.A.B. We will not set aside a trial court's judgment terminating a parent-child relationship unless it is clearly erroneous. *In re J.W.*, 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), *trans. denied*. Where, as here, the trial court enters findings of fact, a two-tiered standard of review will be employed. *Id.* First, we determine whether the evidence supports the findings. *Id.* Next, we determine whether the findings support the judgment. *Id.* "A judgment is clearly erroneous if the findings do not support the trial court's conclusions or the conclusions do not support the judgment." *Bester v. Lake County Office of Family and Children*, 839 N.E.2d 143, 147 (Ind. 2005) (quoting *In re R.J.*, 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005)). When reviewing a termination of parental rights, this Court neither reweighs the evidence nor judges the credibility of witnesses. *Id.* Rather, we will consider only the evidence and reasonable inferences therefrom which are most favorable to the judgment. *Id.*

We begin by emphasizing that a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). Rather, when the evidence shows that the emotional and physical development of a child in need of services is threatened, termination of the parent-child relationship is appropriate. *Id.* This Court has stated:

The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

M.H.C. v. Hill, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001) (citations omitted). In sum, the purpose of terminating parental rights is not to punish parents but to protect children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*.

Indiana Code § 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, that:

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied;
 - or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

The petitioner must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *see also In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*.

Father argues that the trial court erred by finding that the BCDCS presented clear and convincing evidence that there is a reasonable probability that the conditions that resulted in H.A.B.'s removal or the reasons for placement outside the home will not be remedied.² "To determine whether there is a reasonable probability that the conditions which resulted in the removal of the children will not be remedied, the trial court should judge a parent's fitness to care for his children at the time of the termination hearing, taking into consideration evidence of changed conditions." *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). The trial court must evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the children. *Id.* In making such a determination, the trial court may consider "evidence of a parent's prior criminal history, drug and alcohol abuse, history of neglect, failure to provide support and lack of adequate housing and employment."

² At the end of his argument section in his brief, Father makes a passing reference to a lack of evidence that the parent-child relationship posed a threat to the child's well-being. However, he makes no cognizable argument regarding the same and has, therefore, waived it. *See Castro v. State Office of Family and Children*, 842 N.E.2d 367, 373 n.2 (Ind. Ct. App. 2006) (citing Ind. Appellate Rule 46(a)(8)(A)), *trans. denied*. Waiver notwithstanding, Ind. Code § 31-35-2-4(b)(2)(B) is written in the disjunctive; therefore, the BCDCS was only required to demonstrate by clear and convincing evidence a reasonable probability that *either* (1) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied *or* (2) the continuation of the parent-child relationship poses a threat to the well-being of the child. The trial court concluded that the BCDCS proved both of these; however, for our review, we only need to find that the evidence supports one of the requirements. *See Bester*, 839 N.E.2d at 148 n.5. Thus, we will review whether the evidence supports the trial court's finding regarding the conditions resulting in removal not being remedied.

Matter of D.G., 702 N.E.2d 777, 779 (Ind. Ct. App. 1998). Also, “the trial court can reasonably consider the services offered to the parent and the parent’s response to those services.” *In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). A pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, will support a finding that there exists no reasonable probability that the conditions will change. *Matter of D.B.*, 561 N.E.2d 844, 848 (Ind. Ct. App. 1990).

Father contends that the BCDCS did not present clear and convincing evidence that the conditions that resulted in H.A.B.’s removal would not be remedied; however, Father does not challenge any of the trial court’s findings. Instead, Father points to the reading classes and two parenting classes that he took while in prison and argues that there “is no evidence before the trial court that [Father] can not parent his child upon release from prison.” Appellant’s Br. p. 11. The BCDCS argues that “there was sufficient evidence to establish that the conditions which led to [H.A.B.’s] removal would not be remedied.” Appellee’s Br. p. 7. We agree with the BCDCS.

In part, the “condition” that resulted in H.A.B.’s removal or the “reason” for his placement outside the home was Father’s incarceration and consequent inability to provide H.A.B. with “food, clothing, shelter, medical care, education or supervision[.]” Petitioner’s Ex. 2, p. 32. On one hand, it is true that because of his incarceration, Father did not, and in fact *could* not, contribute directly to the physical conditions that led to H.A.B.’s removal from Mother’s home. However, for the same reason, Father was equally unable to remedy those conditions. Furthermore, at the time of the termination

hearing, Father still had fifteen months before his earliest possible release from prison. Thus, he obviously would also be unable to remedy those conditions in a meaningful manner during that time period.

During Father's incarceration, he did not contact the BCDCS family case manager—despite the trial court's dispositional decree requiring him to “maintain consistent contact” with the case manager—and failed to inquire about H.A.B. or maintain a relationship with H.A.B. *Id.* at 52. The trial court found this minimal contact with H.A.B. to be consistent with Father's pattern of behavior prior to his incarceration. Indeed, Father does not dispute that he had sporadic or minimal contact with H.A.B. prior to his incarceration, that he did nothing to remedy the known neglectful environment in which H.A.B. lived while he was with Mother, or that he failed to keep in contact with H.A.B. while incarcerated. The termination hearing occurred almost two years after H.A.B. had been removed from Mother's home. Father had been incarcerated all that time, had near non-existent contact with H.A.B., and still had at least fifteen months to serve. Even assuming Father will be released from prison in November 2007, he will have already missed three years of H.A.B.'s life and there will be no guarantee that he will be able to care for H.A.B. Indeed, Father admitted that without training, which would take at least an additional six months, he was not equipped to provide the therapeutic type of care that H.A.B. required. Father's pattern of unwillingness to cooperate with those providing social services, in conjunction with unchanged conditions, support the trial court's finding that there is a reasonable probability that the conditions will not be remedied.

In regard to Father's classes taken in prison, we applaud Father's efforts to take advantage of services offered at his facility and to try and improve himself by learning to read; however, we cannot say that the trial court committed clear error when it found that there is a reasonable probability that the conditions leading to H.A.B.'s removal from Father will not be remedied. *See Castro v. State Office of Family and Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (acknowledging an incarcerated father's initiative to taking a parenting class while in prison but affirming the trial court's conclusion that there was a reasonable probability that the conditions resulting in his child's removal will not be remedied where the father was incarcerated and unable to remedy the conditions that led to removal of child from mother's custody), *trans. denied*; but *cf. Rowlett v. Vanderburgh County Office of Family and Children*, 841 N.E.2d 615, 622 (Ind. Ct. App. 2006) (concluding that the OFC did not present clear and convincing evidence that there was a reasonable probability that the conditions which resulted in the children's removal would not be remedied where an incarcerated parent diligently sought to address deficiencies in his parenting skills while in prison and maintained contact with his children to the greatest extent possible during incarceration), *trans. denied*.³ Because the

³ In *Rowlett*, the incarcerated father, who was scheduled to be released from prison a mere six weeks after the termination hearing, "made a good-faith effort to better himself as a person and a parent" where he had amassed nearly 1,100 hours of individual and group services while incarcerated; was placed in a therapeutic community within prison; earned twelve hours of college credit through Ball State University, was enrolled in an additional eighteen hours, and had been accepted at the University of Evansville and planned to take courses upon his release; had secured employment and a place to live; and planned to continue counseling to remain drug free. *Rowlett*, 841 N.E.2d at 621-22. Additionally, the father "show[ed] a great interest in maintaining a parental relationship and [took] strides toward that end" by sending letters to his children and talking to them by telephone, during which time the "children were happy to talk to him, telling him that they loved him and asking when he was coming home." *Id.* at 622-23.

Father's circumstances are distinguishable from *Rowlett*. Here, Father presented evidence of the completion of two parenting classes, which he completed merely one month prior to the termination

needs of a child are too substantial to force the child to wait while determining if an incarcerated parent would be able to be a parent for him, *see In re Involuntary Termination of Parental Rights of S.P.H.*, 806 N.E.2d 874, 883 (Ind. Ct. App. 2004), we affirm the trial court's termination of Father's parental rights to H.A.B.

Affirmed.

ROBB, J., concurs.

SULLIVAN, J., concurs in result with separate opinion.

hearing, three reading classes to assist him in learning to read, an exercise or "conditioning" program, and a prison fellowship program. *See* Respondent's Exs. A-B. Additionally, Father testified that he was kicked out of a therapeutic community group when he violated prison rules and was caught with tobacco. Moreover, Father has not shown great interest in maintaining contact or a parental relationship with H.A.B.

**IN THE
COURT OF APPEALS OF INDIANA**

HENRY BOOKER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 03A05-0612-JV-686
)	
BARTHOLOMEW COUNTY DEPARTMENT)	
OF CHILD SERVICES,)	
)	
Appellee-Plaintiff.)	

SULLIVAN, Judge, concurring in result

The child was removed from Mother's home not by reason of Father's incarceration but rather by reason of Mother's inability or unwillingness to care for him. To be sure, Father's forced absence may have contributed to the necessity to place the child outside the home, but I do not perceive Part (B)(i) of I.C. § 31-35-2-4(b)(2) to be the persuasive basis upon which to affirm the judgment.

Rather, I deem the evidence to be overwhelming that the disjunctive basis for termination of parental rights, i.e., continuation of the parental relationship would be a threat to the well-being of the child, and is the persuasive basis for affirmance.

On this latter basis, I concur.

